

AUG 29 1983

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL LANDS
AND FUNDS

001 General

001.01 Scope and Application. These rules shall govern practice and procedure in all actions filed pursuant to Section 72-205 et. seq. R.S., Neb., 1943 (Reissue of 1971). Practice and procedure involving this Agency is also governed by the applicable Revised Statutes of Nebraska and the decisions of the Nebraska Supreme Court. In the absence of a specific rule or order of this Agency the statutory rule and practice pertaining to proceedings in the District Court of the State shall be applicable, excluding prehearing conferences .

001.02 Correspondence. All correspondence and filings shall be addressed or delivered to the State of Nebraska, Board of Educational Lands and Funds, P.O. Box 94986, Lincoln, Nebraska 68509. Each piece of correspondence shall embrace only one subject, should clearly state the subject involved, and shall include the name and address of the sender.

001.03 Weekends And Holidays. No official acts shall be required to be performed on any Saturday, Sunday or legal holiday. When a filing of a pleading or the doing of any act is required on or before a certain date which falls on one of these days, the time for filing said pleading or doing said act shall be extended to the next working day.

001.04 Rules - Copies. Copies of these rules of practice and procedure will be available for public distribution at the Board of Educational Lands and Funds office. They shall be distributed to interested parties for a fee of \$1.50 per copy.

001.05 Forms - Copies. Copies of any forms referred to in this body of rules shall be made available, upon request, by the Board.

001.06 Definitions. As used in these rules of practice and procedure, the following definitions shall apply unless the context to be intelligible or prevent absurdity otherwise

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

requires:

001.06A Pleadings shall mean any written application, petition, protest, complaint, answer or motion used in any proceedings pursuant to Section 72-205.03, R.S., Neb., 1943 (Reissue of 1971).

001.06B Proceedings shall mean all matters formally made in connection with any application or petition filed pursuant to Section 72-205.03, R.S., Neb., 1943, (Reissue of 1971).

001.06C Agency shall mean the Board of Educational Lands and Funds of the State of Nebraska.

002 Hearing Examiner

002.01 Appointment of Hearing Examiner. Upon receipt of a petition filed pursuant to Section 72-205.02, R.S., Neb., 1943, (Reissue of 1971), the Board of Educational Lands and Funds shall appoint a Hearing Examiner to administrate, conduct, and preside over all proceedings initiated by the petitioning lessees. The Board shall have discretion to appoint the same Hearing Examiner for all petitioned hearings or may appoint a separate Hearing Examiner for each individual hearing. It shall be within the discretion of the Board of Educational Lands and Funds to appoint as Hearing Examiner whomsoever they believe can serve in said capacity in an efficient and competent manner.

002.02 Compensation of Hearing Examiner. The Board of Educational Lands and Funds may appoint an Examiner not presently under the payroll of the Board; and in the event such an individual should be appointed, his compensation will be agreed upon prior to his appointment. In the event the Board should appoint an individual to act as Hearing Examiner who is already within their employ, said individual shall serve without compensation.

002.03 Oath. All testimony presented before the Hearing Examiner

AUG 20 1983

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

shall be given under oath which the Hearing Examiner will have the authority to administer.

002.04 Subpoena. When a subpoena is desired, the proper party shall indicate to the Hearing Examiner the names and the last-known addresses of the witnesses to be called. If evidence other than oral testimony is required, each item to be produced must be adequately described. All requests for subpoena shall be directed to the attention of the Hearing Examiner no less than fourteen (14) days prior to the published date of said hearing. The Hearing Examiner shall issue subpoena as requested and mail the same to the party so requesting within seven days of receipt of request therefore. Service may be made either by mailing a copy thereof by registered or certified mail, return receipt requested, not less than three days before the hearing date of the cause which the witness is required to attend or, personally, by any person not interested in the action. No costs for serving a subpoena will be allowed.

002.05 Notice of Hearing. It shall be the duty of the Hearing Examiner to ascertain that the notice of hearing is properly published in accordance with Nebraska Statutes.

002.06 Further Duties of Hearing Examiner. The Hearing Examiner shall:

002.06A Establish a date and a place within the County of the petitioning lessees and shall provide for notice of such time and place by publication in a legal newspaper, published in the County where such school lands are situated, once each week for two consecutive weeks beginning at least twenty days prior to the date of the public hearing.

002.06B The Hearing Examiner shall conduct any and all pretrial conferences as provided by these rules of practice and procedure.

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

002.06C The Hearing Examiner shall preside at the hearing, will open the proceedings, will acknowledge the appearance of counsel, will hear the evidence and rule on motions and objections, may interrogate witnesses, and will close the proceedings.

002.06D If the petitioning lessees are not represented by legal counsel, the Hearing Examiner shall explain to the petitioning lessees the rules of practice and procedure, and generally shall conduct the hearing in a less formal manner than when the petitioning lessees are represented by legal counsel. It should be the purpose of the Hearing Examiner to assist the petitioning lessees who appear without such representation to the extent necessary to allow them to fairly present their evidence, testimony, and arguments on the issues.

002.06E The Hearing Examiner shall compile a complete record of all testimony taken and evidence received at said hearing, which record shall be filed in the office of the Board of Educational Lands and Funds. All proceedings shall be recorded by a court reporter and a permanent record thereof shall be made. All costs involved in producing the original copy shall be divided between the petitioning lessees and the Board of Educational Lands and Funds. Any additional copies requested by either party will be paid by the party so requesting.

002.06F The Hearing Examiner conducting said hearing shall make, in writing, complete findings and recommendations to the Board as to the value of school lands according to classification.

AUG 29 1983

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

003 Commencement of Proceedings

003.01 Filing of Petition. In order to protest a new rental schedule in any individual county, a signed petition must be received in the office of the Board of Educational Lands and Funds by 1700 hours of the 45th day from the date of publication of the notice that a new schedule is to take effect; said petition must request that a hearing be held pursuant to Section 72-205.02; and, the petition must be signed by (1) at least twenty-five percent of the lessees in counties having less than 100 leaseholders, or (2) twenty-five of the lessees in counties having 100 or more leaseholders within said counties.

003.02 Formal Petition. Within thirty days after filing the petition required in Section 003 of Chapter 10, a formal petition must be filed with the Board of Educational Lands and Funds setting forth all issues contemplated by the lessees of the affected counties.

003.03 Formal Answer. Within thirty days after filing the formal petition by the petitioning lessees, Counsel for the Board of Educational Lands and Funds must file an answer with the Hearing Examiner, which answer shall be incorporated with the pleadings.

003.04 Hearing Examiner. Upon being appointed as Hearing Examiner pursuant to Chapter 10, subsection 002.01, said Hearing Examiner will become the custodian of all pleadings filed under Chapter 10, Section 003; and said pleadings shall be turned over to the Hearing Examiner upon receipt thereof in the office of the Board of Educational Lands and Funds.

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

004 Pre-Conference Hearing Procedures

004.01 Stipulations. It is expected that all parties prior to the hearing will stipulate to evidence to the fullest extent to which complete or qualified agreement can be reached including all material facts that are not or should not fairly be in dispute.

004.02 Pre-Trial Conferences. Any party may request that an informal conference be held with a view to resolving issues of fact or otherwise assisting in preparation for a formal hearing or possible disposition of the case in whole or in part without a hearing. Said conference shall take place in the presence of the Hearing Examiner in the office of the Board of Educational Lands and Funds, unless otherwise agreed.

004.03 Motions. The Hearing Examiner shall entertain only the following motions prior to the hearing:

1. Motion for continuance
2. Motion for dismissal
3. Motion for disqualification of Hearing Officer

While the above-listed motions must be heard by the Hearing Examiner, other motions may be heard upon agreement by the parties. All motions prior to hearing will be heard in the office of the Board of Educational Lands and Funds, unless otherwise agreed.

004.04 Filing of Motions And Notice. All motions prior to hearing will be filed in the office of the Board of Educational Lands and Funds and notice given to all interested parties by registered or certified mail, return receipt requested, and must give a minimum of seven days notice prior to hearing on the motion. All motions must be filed at least 14 days prior to the date of the published hearing. No motion, other than a Motion for

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL LANDS
AND FUNDS

Continuance, may be heard prior to hearing if not filing at least 14 days prior to the date of the hearing.

005 Hearing

005.01 General. All hearings conducted pursuant to these rules will conform generally with the trial procedure in the District Courts of the State of Nebraska.

005.02 Motions. The Hearing Examiner may entertain any motion prior to or during the hearing; it shall be within the discretion of the Hearing Examiner to rule on motions immediately or to take them under advisement and proceed with the hearing; any motion taken under advisement will be ruled on within two weeks following completion of the hearing, and all parties will be advised as to the Hearing Examiner's ruling.

005.03 Opening Argument. Any party wishing to make an opening argument for the record may do so.

005.04 Presentation of Evidence. It shall be incumbent upon the petitioning lessees to present their case first, whereupon the Board of Educational Lands and Funds shall present its case. Rebuttal witnesses may be allowed in the discretion of the Hearing Examiner.

005.05 Hearing Examiner's Evidence. The Hearing Examiner shall have discretion to call any witnesses he desires after both parties have rested. In the event the Hearing Examiner's witnesses present new evidence, an opportunity for rebuttal will be allowed either party.

005.06 Closing Arguments. Any party wishing to make a closing argument for the record may do so.

005.07 Legal Briefs. The Hearing Examiner is authorized by these rules to require legal briefs to be filed within thirty days of the conclusion of the hearing by both parties. Said briefs shall

Title 97 - Board of Educational Lands and Funds
Chapter 10 - PRACTICE AND PROCEDURES BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

direct their attention to the legal issues set forth in the pleadings.

005.08 Findings And Recommendations By Hearing Examiner. The Hearing Examiner shall file his findings and recommendations with the Board of Educational Lands and Funds as soon as is conveniently possible, and shall serve a copy thereof to all attorneys of record or other designated representative.

006 Evidence.

006.01 Admissibility of Evidence. The Hearing Examiner may admit and give probative effect to evidence which possesses probative value commonly accepted among reasonable prudent men in the conduct of their own affairs. Incompetent, irrelevant, immaterial and unduly repetitious evidence may be excluded.

006.02 Copies As Evidence. A copy of any book, record, paper or document may be offered directly in evidence in lieu of the original, where the original is unavailable or where there is not objection; and where the original is admitted in evidence, a copy may be substituted later for the original or such part thereof as may be material or relevant upon leave granted in the discretion of the Hearing Examiner.

006.03 Identification of Exhibits. Exhibits attached to a stipulation or entered in evidence which are offered by a petitioning lessee shall be numbered serially; whereas, those offered by the Board of Educational Lands and Funds shall be lettered serially; and those offered jointly shall be numbered and lettered serially.

006.04 Disposition of Exhibits. After a final order has been rendered by the Board of Educational Lands and Funds, either party desiring the return, at his own expense, of any exhibits belonging to him shall make application in writing to the Hearing Examiner within thirty days thereof suggesting a practical manner of delivery; otherwise, exhibits may be disposed of as the Hearing Examiner deems advisable.

AUG 29 1983

Title 97 - Board of Educational Lands and Funds

Chapter 10 - PRACTICE AND PROCEDURE BEFORE THE BOARD OF EDUCATIONAL
LANDS AND FUNDS

006.05 Official Notice of Evidence. The Hearing Examiner may take notice of judicially recognizable facts and of general, technical, or scientific facts within the specialized knowledge of the Hearing Examiner. Parties to a proceeding shall be notified either before or during the hearing of facts so notice and shall be afforded an opportunity to contest such facts.

006.06 Evidence Outside The Record. Except as provided by these regulations, the Hearing Examiner shall not consider factual information or evidence in the determination of any proceeding unless the same shall have been offered and made a part of the record in the proceeding.

006.07 Presentation of Evidence And Testimony. Every party to said hearing shall have the right to present evidence and testimony of witnesses and to cross-examine any witness who testifies in behalf of an adverse party. Opportunities shall be afforded every party to present evidence and testimony as rebuttal to evidence presented by another party, except that repetitious evidence shall be excluded.

006.08 Rules Of Evidence. Any party may request that the proceeding be bound by the rules of evidence applicable in a District Court of Nebraska. Such party shall file with the Hearing Examiner, at least 14 days prior to the date of the scheduled hearing, a written request that the hearing be so conducted.

006.09 Record Of Hearing. The petitioning lessees may request and obtain a certified copy of the record of the hearing. Charges for preparing the certified copy of the record shall be paid by the party requesting it. The official record will consist of the Court Reporter's record and all exhibits received in evidence.

Chapter 10 - Sec. 72-201, 72-205.02, 72-205.03, 72-205.04, and
Sec. 72-232 Nebr. Rev. Stat.

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